

REMARKS

The Rejections Under 35 USC § 102

The claims are rejected as allegedly anticipated by either US '290 or '893. Only a broad generic allegation is made without any detailed explanation for the reason(s) for the rejection.

As the Examiner knows, "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." See *Ex parte Levy*, 17 USPQ2d 1461 (BPAI 1990) citing *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, 221 USPQ 481 (Fed. Cir. 1984). The Office Action does not identify each element of the claimed invention in the reference, or how said reference anticipates the claimed compounds. Thus, the rejections are improper under *Levy* and *Lindemann Maschinenfabrik*.

Nevertheless, applicants provide the following.

Regarding U.S. 5,958,290, it appears that the Office Action did not consider the proviso at the end of claim 1.

US '290 discloses compounds of a formula I having a phenyl ring which is substituted with W, X and Y. W of US '290 corresponds to Q* in formula (I) of the present application and X and Y therein correspond to X and Y in formula (I) of the present application.

X and Y of formula I of US '290 are defined as being "independently of one another H or F, and one of X and Y is also Cl," (see column 5, lines 9-10), whereas according to the present application (i.e. the proviso of claim 1) "X and/or Y is/are either an unsubstituted or halogen substituted alkyl or alkoxy radical having o or p carbon atoms, where the sum $0 + p$ is ≥ 2 , or a trimethylsilyl radical."

It follows that the claims of the present application are not anticipated by US '290.

U.S. 6,056,893 discloses compounds of formula (I) having a ring A² which is substituted with a group W. The group W is described on column 1 therein. It contains among other radicals a group X, which corresponds to one of L or M of the present claims. X is defined as being $-C\equiv C-Y$ or $-H=CH-Y$. See column 1, line 14. The definition of L and M, which is now in claim 1, does not contain alkenyl and alkynyl. Thus, there is no anticipation.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Csaba Henter/

Csaba Henter, Reg. No. 50,908
Attorney for Applicants

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1
2200 Clarendon Boulevard, Suite 1400
Arlington, VA 22201
Telephone: 703-243-6333
Facsimile: 703-243-6410
Attorney Docket No.:MERCK-2995

Date: July 8, 2008